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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SAMUEL BERTRELL MOORE, Petitioner, v. UNITED STATES OF AMERICA, Respondent,	: CIVIL NO: 1:CV-00-2148 : : (Judge Caldwell) : : (Magistrate Judge Smyser) : :
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REPORT AND RECOMMENDATION

FILED
HARRISBURG, PA

MAR 07 2001

MARY E. D'ANDREA, CLERK
PER *[Signature]* DEPUTY CLERK

The petitioner, a federal prisoner proceeding *pro se*, filed in the United States District Court for the District of Columbia a motion under 28 U.S.C. § 2255 to vacate, set aside or correct his sentence. The petitioner claimed that a clerical error was made in the preparation of his Judgement and Commitment Order regarding the term of his supervised release and that the Bureau of Prisons (BOP) incorrectly calculated the term of his sentence. By an Order filed on July 17, 2000, Judge Roberts of the United States District Court for the District of Columbia granted the petitioner's § 2255 motion in part and amended the petitioner's Judgment and Commitment Order. Judge Roberts further ordered that the petitioner's claim that the BOP incorrectly calculated his sentence be transferred to this court. On December 15, 2000, this court

received part of the original file from the United States District Court for the District of Columbia. It was not until January 16, 2001, however, that this court received a copy of the petitioner's § 2255 motion.

By an Order dated January 22, 2001, we construed the petitioner's claim that the BOP incorrectly calculated his sentence as a habeas corpus claim brought pursuant to 28 U.S.C. § 2241, and we ordered the respondent to show cause on or before February 8, 2001 why the petitioner should not be granted habeas corpus relief. The Order of January 22, 2001 provided that the petitioner may file a reply to the respondent's response to the show cause order within ten days of its filing.

On February 8, 2001, the respondent filed a response to the petition. The petitioner requested and received an extension of time to file a reply, and on March 1, 2001 the petitioner filed a reply.

The respondent argues that the petition should be dismissed because the petitioner has not exhausted

administrative remedies with regard to his claim that the BOP incorrectly calculated his sentence.

"Federal prisoners are ordinarily required to exhaust their administrative remedies before petitioning for a writ of habeas corpus pursuant to § 2241." *Moscato v. Federal Bureau of Prisons*, 98 F.3d 757, 760 (3d Cir. 1996). The basic rationale for the exhaustion requirement is that judicial review may be facilitated by the agency's development of a factual record, that judicial time may be conserved if the agency grants the relief sought, and that administrative autonomy requires that an agency be given an opportunity to correct its own errors. *Arias v. United States Parole Comm'n*, 648 F.2d 196, 199 (3d Cir. 1981).

The BOP has set up procedures for inmates to follow in seeking administrative remedies. These procedures are contained in Title 28 of the Code of Federal Regulations at sections 542.10 to 542.19. The regulations establish three levels of administrative review. At the first level the Warden of the institution responds to the inmate's complaint. If the inmate is not satisfied with the Warden's response the inmate may

appeal to the Regional Director. If the inmate is not satisfied with the Regional Director's decision the inmate may appeal to the Office of the General Counsel. "Appeal to the General Counsel is the final administrative appeal." 28 C.F.R. §542.15.

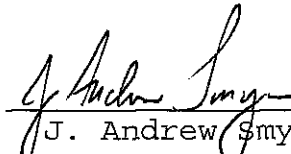
The respondent submitted the declaration of M. Leslie Owen, an Assistant Regional Counsel with the Northeast Regional Office of the BOP. Owen states that computerized indexes of all administrative appeals filed by inmates are maintained by the Regional and Central offices, in a system know as SENTRY, so that rapid verification can be made as to whether an inmate has exhausted administrative appeals on a particular issue. Owen Decl. at ¶3. Owen states that she reviewed the SENTRY records and that those records establish that although the petitioner submitted an informal request to a staff member regarding the computation of his sentence, the petitioner has never raised any issues regarding his sentence calculation through the BOP's administrative remedy program. *Id.* at ¶4.

The petitioner admits that he has not exhausted administrative remedies but he asserts that he should be excused from the exhaustion requirement. The petitioner states that BOP

staff members told him that "it might be a good idea to leave it alone" and that "people have lost good time for making a nuisance of themselves and filing frivolous paperwork that is a waste of time. See Doc. 8 at 5. The petitioner states that he took the staff members tone of voice and demeanor as a warning and that he was therefore thwarted in his attempt to pursue a remedy. *Id.*

Assuming *arguendo* that BOP staff made the above-referenced statements to the petitioner, the requirement remains in place that a petitioner must have exhausted administrative remedies.

Based on the foregoing, it is recommended that the petition be dismissed based on the petitioner's failure to exhaust administrative remedies and that the case file be closed.



J. Andrew Smyser
Magistrate Judge

Dated: March 7, 2001.

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SAMUEL BERTRELL MOORE, : CIVIL NO: 1:CV-00-2148
Petitioner, :
 : (Judge Caldwell)
v. :
 : (Magistrate Judge Smyser)
UNITED STATES OF AMERICA, :
Respondent, :
 : **FILED**
 : **HARRISBURG, PA**


MAR 07 2001

NOTICE

MARY E. STANDHEA, CLERK
PER
DEPUTY CLERK

Any party may obtain a review of the Report and Recommendation pursuant to Rule 72.3 of the Rules of Court, M.D.Pa., which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. §636(b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition **within ten (10) days** after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.


J. Andrew Smyser
Magistrate Judge

Dated: *March 7, 2001.*

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

March 7, 2001

Re: 1:00-cv-02148 Moore v. USA

True and correct copies of the attached were mailed by the clerk
to the following:

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cc:		
Judge	()	() Pro Se Law Clerk
Magistrate Judge	()	() INS
U.S. Marshal	()	() Jury Clerk
Probation	()	
U.S. Attorney	()	
Atty. for Deft.	()	
Defendant	()	
Warden	()	
Bureau of Prisons	()	
Ct Reporter	()	
Ctroom Deputy	()	
Orig-Security	()	
Federal Public Defender	()	
Summons Issued	()	with N/C attached to complt. and served by: U.S. Marshal () Pltf's Attorney ()
Standard Order 93-5	()	
Order to Show Cause	()	with Petition attached & mailed certified mail to: US Atty Gen () PA Atty Gen ()

DA of County () Respondents ()

Bankruptcy Court

Other

Hydew ()

MARY E. D'ANDREA, Clerk

DATE:

3/7/01

BY:

ST8

Deputy Clerk